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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [redacted] 45

BESTER WILLIAM STEELE,

Petitioner,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, A CORPORATION; BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, W. H. THOMAS, J. P. ADAMS AND B. F. McGILL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA AND BRIEF IN SUPPORT THEREOF.

ARTHUR D. SHORES,
CHARLES H. HOUSTON,
Counsel for Petitioners.

JOSEPH C. WADDY,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 826

BESTER WILLIAM STEELE,

Petitioner,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, A CORPORATION; BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, W. H. THOMAS, J. P. ADAMS AND B. F. McGILL.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner Bester William Steele respectfully prays that a writ of certiorari issue to review a judgment of the Alabama Supreme Court entered in the above-entitled cause January 13, 1944, which affirmed a decree of the Circuit Court of Jefferson County, dismissing petitioner's Substituted Amended Complaint on demurrers filed thereto by the respondents.

Opinions Below.

The opinion of the Alabama Supreme Court is reported in 16 So. (2d) 416; and in the record at pp. 131 to 144.

The opinion of the Circuit Court of Jefferson County is not reported. It appears in the record at pp. 124 to 126.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Section 347).

Statute Involved.

The statute involved is the Railway Labor Act (Act of May 20, 1926 as amended by the Act of June 20, 1934 (45 U. S. C. Sections 151-164), which is printed in the appendix to the petition and brief in *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, October Term, 1943, No. 779, to which reference is now respectfully made.

Statement.

This case was submitted and decided on petitioner's Substituted Amended Complaint and supporting Exhibits (R. 83 to 98).

Petitioner, a Negro locomotive fireman employed by the respondent Louisville & Nashville Railroad Company (hereinafter called the Railroad) on its seniority district known as the South and North Alabama Division (hereinafter called the S. & N. A. Division), sued the Railroad and the Brotherhood of Locomotive Firemen & Enginemen (hereinafter called the Brotherhood) which represented the entire craft of locomotive firemen on the Railroad under the Railway Labor Act and certain members of the Brotherhood, for injunction against the Railroad or the Brotherhood enforcing or recognizing a certain Agreement of February 18, 1941 or Supplement May 12, 1941, negotiated by the Brotherhood for the whole craft of firemen; for an injunction against the Brotherhood acting as his representative under the Railway Labor Act so long as it refused to give him notice, opportunity to be heard, or voice in the formation of policy adversely affecting his

interests, or so long as it discriminated against the Negro minority nonmembers in favor of its white majority members; a declaratory judgment establishing the rights, status and other legal relations of the parties; damages and discovery (R. 96 to 97). Petitioner sued in his individual capacity and as representative of the Negro firemen employed on respondent Railroad as a class (R. 84).

Petitioner holds seniority as a fireman on the S. & N. A. Division from March 5, 1910. When the Substituted Amended Complaint was filed he was 55 years of age, in perfect health, able and ready to work, and had worked to the complete satisfaction of the Railroad without a demerit in the past 16 years. From December 28, 1921 to April 8, 1941 he was in road passenger service (R. 85). Prior to the passage of the Railway Labor Act down to April 8, 1941 he was in the South End Passenger Pool, one of the best jobs in his seniority district (R. 91). His contract of employment included the terms of the collective bargaining agreement between the Railroad and its firemen and hostlers dated March 1, 1929 (R. 86; 146) which provided in part that in assignment of runs preference should be given to the oldest fireman in road service when competent and worthy (R. 153).

The white Brotherhood members constitute the majority firemen on the entire Railroad system and ever since the passage of the Railway Labor Act have designated the Brotherhood as the representative for purposes of the Act of the entire craft or class of firemen on the Railroad (R. 86). The Negro minority firemen and the white Brotherhood-member majority firemen constitute the entire craft or class of firemen on the Railroad (R. 86). Negro firemen are excluded from the Brotherhood by constitution and ritual solely because of race (R. 83). The Negro firemen were never given the opportunity to participate in the selection of a representative for the entire craft or class of firemen

and do not know how the Brotherhood was chosen (R. 86); but by virtue of their minority position they have been compelled to accept the Brotherhood as their representative under the Railway Labor Act (R. 87) and they did accept the Brotherhood as their representative assuming it would act without fraud or discrimination and relied on it for protection in collective bargaining and handling of grievances (R. 87).

By accepting the designation as representative and asserting the exclusive right to represent the entire craft or class of firemen under the Railway Labor Act, the Brotherhood placed itself in a confidential relationship with each fireman in the craft, and was under a duty to represent him impartially, to give him notice, opportunity to be heard and a chance to vote on any proposed policy adversely affecting his interest; to make prompt and full disclosure of all actions taken by it and not to discriminate against a non-member in favor of itself and its members. Yet it has been persistently hostile to the Negro firemen and has sought to drive them out of service in order to create a monopoly of employment or the best jobs for its own members, regardless of seniority, competence or worth. It has refused to give the Negro firemen notice, opportunity to be heard or vote on matters of policy affecting their interests adversely, or to report its actions, or to handle their grievances wherever there is a conflict of interest between them and the Brotherhood members; or to give them fair, honest representation under the Railway Labor Act (R. 87-88).

March 28, 1940, without notice to the Negro firemen or giving them a chance to be heard or to vote on the matter, the Brotherhood, acting as representative of the entire craft of firemen under the Railway Labor Act on each of the 21 railroads mentioned therein, served a Notice as provided under the Act for modification of existing collective bargaining agreements (R. 88). The Brotherhood proposals

aimed at driving the Negro firemen *completely out of the service of the railroads and creating a closed shop for its own membership.* It proposed

> "1. Only promotable men will be employed for service as locomotive firemen or for service as helpers on other than steam power.
>
> "2. When new runs or jobs are established in any service, only promotable firemen or helpers will be assigned to them.
>
> "3. When permanent vacancies occur on established runs or jobs in any service, only promotable firemen or helpers will be assigned to them" (R. 59).

Under railroad practice, engineers are chosen by promotion from the ranks of firemen. Negroes are never promoted from firemen to engineers. Hence, in railroad parlance, white firemen universally are called "promotable men"; Negroes designated as "non promotable men" (R. 89).

Without notice to the Negro firemen or opportunity for them to be heard, the Brotherhood and the railroads, after negotiations pursuant to said Notice, entered into an Agreement February 18, 1941 (R. 90) seriously curtailing Negro firemen's employment and seniority rights: restricting their employment to seniority districts they were then working on, providing that in such seniority districts they should not exceed fifty per cent in each class of service on the district and that until such percentage should be reached only promotable men should be hired and all new runs and vacancies filled by promotable men. The Agreement further reserved the right of the Brotherhood to press for more restrictions on Negro firemen's employment on individual carriers (R. 10-13). On May 12, 1941 the respondent Railroad and the Brotherhood acting again as representative of the entire craft of firemen under the Railway Labor Act, without notice to the Negro firemen, negotiated a supplementary agreement for the practical administration of the Agreement of

February 18, 1941, and providing *inter alia* that the Brotherhood firemen should get the odd job in each class of service (R. 13-21).

The Brotherhood never reported the fact of the Notice, the Agreement or the supplementary agreement to the Negro firemen; the Railroad and Brotherhood put same into effect without notice to the Negro firemen (R. 90).

Although Negro firemen constituted the minority firemen on the entire respondent Railroad system, they constituted more than fifty per cent on the S. & N. A. Division and three other seniority districts (R. 86). Prior to the passage of the Railway Labor Act and down to April 8, 1941, as above noted, petitioner was in the South-End Passenger Pool, composed of six firemen (five Negro and one white). April 8, 1941 the Pool was reduced to four firemen; and although petitioner and two other Negro firemen were entitled to remain in the Pool by reason of seniority, competence and worth, yet the Railroad and the Brotherhood pursuant to said Agreement of February 18, 1941 arbitrarily disqualified all the Negro firemen and reformed the Pool with four white Brotherhood member firemen, all junior to petitioner and no more competent or worthy (R. 92).

In consequence petitioner was completely out of work for 16 days; then had to take a more arduous, less remunerative job on a local freight (R. 93). Thereafter on December 22, 1941 the Railroad and the Brotherhood under said Agreement and supplement *supra* took that job away from him, replaced him by a Brotherhood member junior to him, no more competent or worthy, and in spite of the fact no complaint had been made about his work. As a result he had to take a job firing a switch engine, which was even worse than local freight (R. 93). He stayed on the switch engine until January 3, 1942 when he was reassigned to the South-End Passenger Pool (R. 93); but the Agreement and Supplement still remain in effect.

Petitioner appealed for relief and redress to the highest operating officer of the Railroad and to the general officers of the Brotherhood without effect, and has exhausted his remedies within the Railroad and the Brotherhood.

On demurrers filed by the respondents, the Circuit Court dismissed the Substituted Amended Complaint, holding

> "The contract of 1941 appears on its face as one designed to increase the number of promotable firemen. It makes available more men who have been necessary to the proper operation of the railroad. In any event the bill fails to negative such necessity or to aver that a contract more favorable to complainant and his class was a practical possibility. The general allegations of fraud and discrimination in the execution of the contract are not assumed to be true merely because its provisions are not as favorable to the entire group of employees, or a portion thereof, as were the provisions of a former contract". (R. 125).

On appeal the Supreme Court of Alabama affirmed, holding

1. that the recent cases *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297; *General Committee v. M. K. T. R. Co.*, 320 U. S. 338; and *General Committee* v. *So. Pacific Company*, 320 U. S. 323, did not apply (R. 134; 16 So. 2d at p. 418);

2. that the Railway Labor Act did not intend to create a confidential relation between the representative and the workers it represents, but merely intended that there be a representative chosen by the majority to bargain for the entire craft, "*without any notion of liability to the individual*" (Italics ours; (R. 137; loc cit., p. 419), and that the representative is under no duty of notice and hearing to the minority and *can look out for the interest of its own members to the detriment of the minority.* (Italics ours; R. 142, loc. cit. at p. 422).

(c) If the two junior men in the second pool were one promotable and one non-promotable.

A. (a) The junior non-promotable man and the junior promotable man should be taken out of the pool.

(b) Seniority would govern.

(c) Seniority would govern.

31. Q. The ratio of non-promotable men to promotable men in the 2nd pool is 6 and 7. The first pool at adjustment period is reduced to two men, resulting in displacement of two men in second pool. Who should be displaced?

(a) If the two junior men were promotable?

(b) If the two junior men were non-promotable?

(c) If the two junior men were one promotable and one non-promotable?

A. (a) The junior non-promotable and the junior promotable men would be taken out.

(b) Seniority would govern.

(c) Seniority would govern.

32. Q. The ratio of non-promotable men is 6 and 8 in the second pool. The first pool at adjustment period is reduced 2 men, resulting in displacement of two men in second pool. Who should be displaced:

(a) If the two junior men were promotable?

(b) If the two junior men were non-promotable?

(c) If the junior men were one promotable and one non-promotable.

A. (a) Seniority would govern.

(b) Seniority would govern.

(c) Seniority would govern.

33. Q. The ratio of promotable men to non-promotable men is 6 and 6. There is a vacancy as hostler and no bids received, and the junior promotable fireman is assigned.

If it is necessary to fill the latter's place in second pool, should the non-promotable or the promotable cut off fireman be assigned to the pool?

A. Senior promotable cut off men should be assigned.

34. Q. The ratio of non-promotable firemen in second pool is 6 and 7. A vacancy as hostler is advertised and no bids received, the junior promotable fireman being assigned. It is necessary to fill the latter's place. Should the senior promotable or non-promotable fireman be added to the second pool?

A. The senior cut off promotable fireman should be added.

35. Q. The ratio of non-promotable to promotable firemen in second pool is 6 and 8. A vacancy for hostler is advertised and no bids received, the junior promotable firemen being assigned. It is necessary to fill the latter's place. Should the senior promotable or non-promotable cut off fireman be added to the second pool?

A. The senior cut off should be added.

It is understood by both parties to this agreement that it became effective March 15, 1941, and no transaction that took place prior to March 15th is considered as coming under the terms of Washington Mediation Agreement of February 22, 1941.

Accepted for the L. & N. Railroad Co. by

(S.) R. C. Parsons,
Director of Personnel.

Accepted for the Employes

(S.) W. G. Metcalfe,
General Chairman, B. L. F. & E.